

## Agency 98

# Kansas Water Office

### *Articles*

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### **Article 1.—PUBLIC HEARINGS ON STATE WATER PLAN**

**98-1-1. Notice.** Notice of public hearings on the state water plan or any section thereof, or amendments thereto, shall be given by the water resources board to those agencies and persons, both public and private, as are set forth in K.S.A. 82a-905.

The board shall give notice of such hearings to such other individuals and organizations as in the opinion of the board have an interest in water development.

First publication of the legal notice of hearing in the official state paper shall be no earlier than one month prior to the first public hearing and not later than two weeks prior to the first hearing.

In addition to the official notice of public hearings required by law, the board shall issue press releases in order to publicize such hearing or hearings as widely as possible. (Authorized by K.S.A. 82a-923; effective Jan. 1, 1966.)

**98-1-2. Conduct of hearing.** The chairman of the water resources board or a member of the board designated by him shall preside at any public hearing on the state water plan.

The board will request those persons desiring to appear at any public hearing on the state water plan to notify the board at least seven days prior to the date of the hearing.

Those persons who have notified the board in advance of the hearing of their desire to be heard shall be scheduled to be heard first at any hearing; any person who has not notified the board of his desire to appear may be heard if the time schedule for the hearing permits.

Any person who desires to have his statement

made a part of the public record of any hearing on the state water plan, any section thereof, or amendments thereto, shall submit two copies of the statement to the board. An oral summary of such statement may be presented at the hearing.

Any person who is unable to appear at a scheduled hearing may submit a written statement to the office of the board in Topeka. Such statements will be made a part of the public record of the hearing if submitted not later than ten days following the date of the hearing.

The chairman, members of the water resources board, and members of the staff of the water resources board may question any person who presents a statement.

The person presiding at any hearing on the state water plan may set time limits on oral presentations and may establish such other informal procedures as are appropriate. Such procedures shall be announced at the beginning of each hearing. (Authorized by K.S.A. 82a-923; effective Jan. 1, 1966.)

### **Article 2.—FINANCIAL ASSISTANCE OR REIMBURSEMENT; LANDS, EASEMENTS, RIGHTS-OF-WAY**

**98-2-1. Definitions.** The following terms used herein are defined as follows:

(A) The term state water plan act means K.S.A. 82a-901 through 82a-926 inclusive.

(B) The term state water plan means K.S.A. 82a-927 through 82a-946 inclusive.

(C) The term board means the Kansas water resources board.

(D) The term flood control storage means that portion of the active storage capacity of a reservoir, including a multipurpose reservoir, available

for the temporary detention of water but excludes any portion of the storage capacity of such reservoir allocated to conservation storage.

(E) The term state assistance shall mean the financial assistance by the state to certain public corporations authorized by K.S.A. 82a-909, including amounts paid by the state by way of reimbursement as authorized by K.S.A. 82a-909 (b).

(F) The term applicant means a public corporation as defined in K.S.A. 82a-902 which has the legal authority to construct, operate, and maintain a water development project and which applies to the board for a determination that it is eligible to receive state assistance. (Authorized by K.S.A. 82a-923; effective Jan. 1, 1966.)

**98-2-2. Limitations on state assistance.**

State assistance to a public corporation, as defined in rule (98-2-1 (E)), shall in all cases be limited to a percentage of the costs which such public corporation has on or after April 23, 1963, become, or shall in the future become, actually and legally obligated to pay for lands, easements, or rights-of-way necessary for the construction, operation, or maintenance of a water development project for which state assistance is authorized by K.S.A. 82a-909. (Authorized by K.S.A. 82a-923; effective Jan. 1, 1966.)

**98-2-3. Eligible costs.** The costs for which a public corporation may receive a percentage in state assistance shall include amounts which such public corporation has on or after April 23, 1963, become, or shall in the future become, actually and legally obligated to pay to purchase, obtain options to purchase, lease, or acquire through the power of eminent domain: (A) Lands occupied or to be occupied by the dams or reservoirs of a water development project for which state assistance is authorized by K.S.A. 82a-909, or to be occupied by other structures necessary for the construction, operation, or maintenance of such dams or reservoirs, or for (B) lands, easements, or rights-of-way necessary for the operation or maintenance of such dams or reservoirs, or for (C) lands, easements, or rights-of-way necessary to provide access to such dams or reservoirs for the purpose of constructing, operating, or maintaining them. (Authorized by K.S.A. 82a-923; effective Jan. 1, 1966.)

**98-2-4. Ineligible costs.** The costs for which a public corporation may receive a percentage in state assistance shall not include any

amounts which such public corporation has or shall become obligated to pay for purchases of water rights, administration of contracts, appraisals of real estate, engineering reports, or attorney's fees, nor shall such costs include any amounts which a public corporation has paid, shall pay, or shall become obligated to pay in satisfaction or compromise of any legal liability or alleged legal liability for damages on the part of such public corporation, other than an award of or judgment of damages for property taken by such public corporation by the power of eminent domain, whether such liability is determined by judicial proceeding, administrative decision, arbitration, negotiation, or in any other manner whatsoever. (Authorized by K.S.A. 82a-923; effective Jan. 1, 1966.)

**98-2-5. Necessity of finding by the board.** Any public corporation desiring to receive state assistance as defined in rule (98-2-1 (E)) shall first make application to the board requesting the board to find that it is eligible for such state assistance in connection with the water development project. A public corporation will not receive any such state assistance prior to a formal determination by the board and the inclusion of the water development project in the state water plan that such public corporation has become or will in the future become obligated to pay eligible costs as such are defined in rule (98-2-3) in connection with the installation of the water development project for which state assistance is authorized by the provisions of K.S.A. 82a-909. (Authorized by K.S.A. 82a-923; effective Jan. 1, 1966.)

**98-2-6. Filing of application.** Applications requesting a determination of eligibility by the board shall be in writing, and shall be signed by the chief officer of the governing body of the applicant. Applications shall be filed with the board at its Topeka office. (Authorized by K.S.A. 82a-923; effective Jan. 1, 1966.)

**98-2-7. Contents of application.** (A) All applications for a determination of eligibility submitted to the board shall state:

(1) That the applicant requests that the board find that the applicant is eligible to receive state assistance for the water development project;

(2) That the applicant has the legal power and authority to construct, operate, and maintain the

water development project as to which the determination of eligibility is requested;

(3) That the water development project as to which the determination of eligibility is requested includes or will include features designed to provide flood control storage and flood control benefits;

(4) That the applicant has on or after April 23, 1963, become, or reasonably expects to become in the future, actually and legally obligated to pay eligible costs as defined in rule (98-2-3), in connection with the water development project as to which the determination of eligibility is requested;

(5) That the water development project as to which the determination of eligibility is requested will result in benefits to the state of Kansas as a whole, or to a section thereof beyond the boundaries of the applicant;

(6) That the water development project as to which the determination of eligibility is requested will confer flood control benefits beyond the boundaries of the applicant in excess of twenty percent (20%) of the total flood control benefits resulting from said water development project.

(B) In addition, all applications shall contain either:

(1) An itemization of all obligations for eligible costs as defined in rule (98-2-3) actually and legally incurred by the applicant on or after April 23, 1963, and prior to the date of the application which were incurred in connection with the water development project as to which the determination of eligibility is requested, or

(2) An estimate of the obligations which the applicant reasonably expects actually and legally to incur in the future for eligible costs as specified in rule (98-2-3) in connection with the water development project as to which the determination of eligibility is requested, or

(3) In an appropriate case, both an itemization as specified in subsection (B) (1) of this rule (98-2-7) and an estimate as specified in subsection (B) (2) of the rule (98-2-7).

(C) In addition, all applications shall contain a statement of the total amount of state assistance which will be requested for the water development project as to which the determination of eligibility is requested in the event that the board determines that the applicant is eligible for state assistance in connection with such water development project. (Authorized by K.S.A. 82a-923; effective Jan. 1, 1966.)

### **98-2-8. Evidence in support of applications.**

(A) In support of the facts required to be set forth in an application by rule (98-2-7 (A)), all applications shall include, or have annexed thereto, appraisals of:

(1) Average annual floodwater damages which will be prevented as a result of the construction, operation, and maintenance of the water development project as to which the determination of eligibility is requested; and

(2) Any other flood control benefits which it is anticipated will be derived from such water development project; and

(3) Any other benefits which it is anticipated will be derived from such water development project, including but not necessarily limited to benefits in the nature of increased land evaluation, disruption of service, and increased buying power. Such appraisals shall designate those average annual floodwater damages which will be prevented and those flood control benefits which it is anticipated will be derived within the boundaries of the applicant, and shall also designate those average annual floodwater damages which will be prevented and those flood control benefits which it is anticipated will be derived beyond the boundaries of the applicant. Such appraisal shall designate other benefits which it is anticipated will be derived beyond the boundaries of the applicant.

(B) Any application may include, or have annexed thereto, any additional information or documentary evidence which tends to establish the existence of any fact or facts stated in the application. It shall be within the discretion of the board to require the submission of such additional information or documentary evidence when, in the judgment of the board, such information or documentary evidence is necessary or desirable to establish the existence of any fact or facts stated in the application. (Authorized by K.S.A. 82a-923; effective Jan. 1, 1966.)

### **98-2-9. Consideration of applications.**

At each meeting of the board, the board shall consider any applications for eligibility received at least 14 days prior to the date of such meeting. In determining the eligibility of the applicant to receive state assistance for the water development project as to which a determination is requested, the board shall consider the facts stated in the application together with all other information or documentary evidence included therein or an-

nexed thereto. In addition the board shall consider whether the water development project as to which the determination of eligibility is requested is included in the state water plan and whether such project is consistent with the general goals and objectives established in the state water plan. (Authorized by K.S.A. 82a-923; effective Jan. 1, 1966.)

**98-2-10. Determination of eligibility.**

When the board shall have considered the application and all other information or documentary evidence included therein or annexed thereto, and shall have considered whether the water development project as to which a determination of eligibility is requested is consistent with the state water plan, it shall then either:

(A) Find that the applicant is eligible to receive state assistance in connection with such water development project, or

(B) Find that the applicant is eligible for such assistance when it is included in the state water plan, or

(C) Find that the applicant is ineligible for state assistance in connection with such project, or

(D) Request additional information or evidence to be submitted by the applicant. (Authorized by K.S.A. 82a-923; effective Jan. 1, 1966.)

**98-2-11. Notification by board.** The board shall notify each applicant of its action under rule (98-2-10) within 14 days after the meeting at which such applicant's application for a determination of eligibility was considered by the board.

(A) In the event the board shall find that the water development project for which the determination of eligibility is requested is not included in the state water plan but meets other eligibility requirements, then the board will notify the applicant of its intention to request inclusion of such water development project in the state water plan at the next general session of the legislature.

(B) In the event the board determines that the applicant is ineligible to receive state assistance in connection with the water development project as to which the determination of eligibility is requested, the board shall so notify the applicant, and the applicant may then submit any new information or evidence to the board, or may request a hearing before the board, or both. (Authorized by K.S.A. 82a-923; effective Jan. 1, 1966.)

**98-2-12. Board records.** (A) The board shall establish and maintain a list of those public corporations which the board has determined to be eligible for state assistance.

(B) The board will in addition establish and maintain a public record which shall include all applications for determination of eligibility, the dates on which such applications were received by the board, copies of the various actions taken by the board in response to such applications, and the dates of such actions by the board.

(C) The records provided for by subsection (A) and (B) of this rule (98-2-12) shall be maintained in the board office in Topeka, and shall be open to public inspection at all times during the regular office hours of such office. (Authorized by K.S.A. 82a-923; effective Jan. 1, 1966.)

**98-2-13. Requests for inclusion in board's budget for next fiscal year.** Any public corporation which has been determined by the board to be eligible to receive state assistance in connection with the water development project may request that the board include amounts for such assistance in its budget for the next fiscal year (July 1 through June 30). A request for inclusion in the board's budget may be filed concurrently with an application for determination of eligibility but the board shall not consider any request for inclusion in its budget prior to making a determination under rule (98-2-10) that the requesting corporation is eligible to receive state assistance. (Authorized by K.S.A. 82a-923; effective Jan. 1, 1966.)

**98-2-14. Time of filing requests for inclusion in budget.** All requests for inclusion of amounts for state assistance in the annual budget of the board shall be filed with the board on or before August 1 prior to the fiscal year in which the state assistance is sought to be received. (Authorized by K.S.A. 82a-923; effective Jan. 1, 1966.)

**98-2-15. Amounts which may be requested to be included.** Requests for inclusion in the annual budget of the board may be made either:

(A) For amounts of eligible costs, as defined in rule (98-2-3), for which the requesting public corporation has not become actually and legally obligated to pay, or which it has not paid, as of the date of the request for inclusion: *Provided*, That it is reasonably anticipated that such costs will be



paid during the fiscal year for which the state assistance is requested, or

(B) For amounts of eligible costs as defined in rule (98-2-3), which have already been paid by the requesting corporation and for which it desires to receive reimbursement during the fiscal year for which the state assistance is requested. (Authorized by K.S.A. 82a-923; effective Jan. 1, 1966.)

**98-2-16. Contents of request for inclusion.** (A) In the event a public corporation requests inclusion in the board's annual budget amounts of such costs as are described in rule (98-2-15 (A)), the request for the inclusion of such amounts:

(1) Shall be made upon such form as may from time to time be prescribed by the board and shall include the name of the requesting public corporation, the name of the county or counties in which such corporation is located, a general description of the lands, easements, or rights-of-way the costs of which are to be paid during the next fiscal year, an estimate of the total amount of such costs, and a statement of the amount of state assistance which is requested, and

(2) Shall be accompanied by an appropriate resolution adopted by the governing body of the requesting public corporation to the effect that it is the reasonable and good faith expectation of such body that the costs for which state assistance is requested will be paid during the fiscal year for which such state assistance is requested, and that any amounts of state assistance which may be received will be applied toward the payment of such costs.

(B) In the event a public corporation requests inclusion in the board's annual budget amounts of such costs as are described in rule (98-2-15 (B)), the request for inclusion of such amounts:

(1) Shall be made upon such forms as may from time to time be prescribed by the board and shall include the name of the requesting public corporation, the name of the county or counties in which such corporation is situated, a general description of the lands, easements, and rights-of-way the costs of which have been paid and for which reimbursement is requested, the date on which the requesting public corporation became actually and legally obligated to pay such costs, the date on which such costs were paid, the total amount of such costs, and a statement of the amount of state assistance requested by way of reimbursement, and

(2) Shall be accompanied by proof satisfactory to the board that such costs have actually been paid by the requesting public corporation, and

(3) Shall be accompanied by an appropriate resolution adopted by the governing body of the requesting public corporation to the effect that it is the good faith intention of the members of such governing body to apply any amounts of state assistance which may be received toward the reimbursement of those accounts from which the legal obligations for such costs were satisfied. (Authorized by K.S.A. 82a-923; effective Jan. 1, 1966.)

**98-2-17. Forms.** The board will upon request furnish to any public corporation the forms provided for in rule (98-2-16). (Authorized by K.S.A. 82a-923; effective Jan. 1, 1966.)

**98-2-18. Budget determination by the board.** At the board's budget meeting, the board will determine which requests for inclusion by public corporations will be included in the annual budget, and the amounts to be included. The budget prepared by the board will contain the name of each public corporation whose request the board has determined to include, the county or counties in which each such public corporation is located, an identification of the resolution filed in support of each request for inclusion, and the amount of state assistance requested for the next fiscal year. (Authorized by K.S.A. 82a-923; effective Jan. 1, 1966.)

**98-2-19. Disbursement of funds.** When the board shall determine that the legislature has appropriated funds, the board may approve transmittal to the requesting public corporation in the amount appropriated by the legislature. The executive secretary of the board will submit a voucher to the state controller for a warrant to be drawn upon the state treasurer and upon approval of such voucher and issuance of such warrant he will send such warrant to the requesting public corporation. (Authorized by K.S.A. 82a-923; effective Jan. 1, 1966.)

**98-2-20. Return of state assistance and accounting for sums received.** At the end of each state fiscal year each public corporation which has received any state assistance during that fiscal year shall file with the board an accounting for the sums so received. Any public corporation receiving state assistance shall return to the state any sums not applied to the purposes for which

such sums were requested and appropriated. (Authorized by K.S.A. 82a-923; effective Jan. 1, 1966.)

### **Article 3.—PUBLIC HEARINGS ON STATE WATER PLAN; PROPOSED CONTRACTING PROCEDURES**

**98-3-1.** (Authorized by K.S.A. 82a-917, 82a-923; effective, E-73-6, Dec. 8, 1972; effective Jan. 1, 1974; revoked May 1, 1984.)

**98-3-2 and 98-3-3.** (Authorized by K.S.A. 82a-923; effective, E-73-6, Dec. 8, 1972; effective Jan. 1, 1974; revoked May 1, 1984.)

### **Article 4.—WEATHER MODIFICATION**

**98-4-1. Purpose.** These rules and regulations were prepared pursuant to K.S.A. 82a-1403 by the executive director within the authority granted by the Kansas water resources board and in consultation with the advisory committee appointed by the board. The purpose of developing licensing standards and report forms and establishing minimum operating requirements for weather modification activities in Kansas is to expand knowledge, minimize conflicts, and assure the use of the most effective methods of carrying on such operations. (Authorized by K.S.A. 1975 Supp. 82a-1403; effective, E-74-39, July 26, 1974; effective May 1, 1976.)

**98-4-2. Definitions.** (1) "Board" means the Kansas water resources board.

(2) "Director" means the executive director of the Kansas water resources board.

(3) "Emergency" means an unusual condition which could not have reasonably been expected or foreseen; one in which it can be anticipated that damage can be avoided or reduced by prompt weather modification action.

(4) "License" means the document issued by the director to qualified persons who make application therefor, authorizing such persons to engage in weather modification activities in Kansas.

(5) "Licensee" means an individual who has applied for and to whom a weather modification license has been issued.

(6) "Permit" means the document issued by the director authorizing weather modification activity in Kansas, which describes the objectives of the activity, the area in which the activity is to take place, the time within which the operation is to be active, and anticipated results.

(7) "Primary target area" means the area

within which weather modification activity is intended to have an effect.

(8) "Research and development" means exploration, field experimentation and/or extension of investigative findings and theories.

(9) "Weather modification activity" means any operation or experimental process which has as its objective inducing change, by artificial means, in the composition, behavior, or dynamics of the atmosphere. (Authorized by K.S.A. 1975 Supp. 82a-1403; effective, E-74-39, July 26, 1974; effective May 1, 1976.)

**98-4-3. Licensing.** 1. No person may engage in any weather modification activity within the state of Kansas without a license and a permit.

2. In order to obtain a license under the Kansas weather modification act the applicant must: a. Make application for a license in Kansas to the board on form KWM No. 1 (copy attached). To assure timely consideration, this should be submitted at least forty-five (45) days prior to the start of the proposed operational period.

b. Pay the \$100.00 license fee unless that fee is waived by a decision of the board because of the educational or experimental nature of the work proposed. The candidate for exemption must prove to the satisfaction of the director and the advisory committee, if consulted, that the nature of the work merits exemption from fees.

c. Meet one of the following professional or educational requirements: (1) Eight (8) years of professional experience in weather modification field research or activities and at least three (3) years as a project director,

(2) A baccalaureate degree in applicable courses and three (3) years experience in application of such studies to weather modification activities,

(3) A baccalaureate degree including 25 hours of meteorological studies and two (2) years of practical experience in weather modification research or activities.

d. Demonstrate, to the satisfaction of the director, by his knowledge of meteorology, cloud physics, and field experience, that he is qualified to conduct a weather modification project of the kind he wishes to conduct in Kansas.

3. Each license shall expire at the end of the calendar year for which it is issued.

4. Weather modification licenses may be renewed annually, effective January 1 each year. Renewal will be automatic upon the following con-

ditions: a. Receipt of a request for renewal by the license holder,

b. Receipt of the \$100 annual license fee, if applicable,

c. Verification by the director or the board that evidence has not become available that would raise doubts as to the qualifications of the license holder. (Authorized by K.S.A. 1975 Supp. 82a-1403; effective, E-74-39, July 26, 1974; effective May 1, 1976.)

**98-4-4. Permits.** 1. A weather modification permit shall be required annually, on a calendar year basis, for each weather modification project. In those cases when a weather modification activity will extend over more than one calendar year, a permit may be extended on a year-to-year basis upon payment of the annual fee, a review by the director and, if desirable, his advisory committee, and the publication of a notice of intent to continue the operation. The director shall determine whether a public hearing is needed.

2. A permit may not be assigned nor transferred by the holder.

3. Permit applications should, if possible, be submitted at least forty-five (45) days prior to the initial date of the proposed operational period for which the permit is sought. This will allow time to hold a public hearing, review the information presented, and permit action by the board prior to the proposed starting date of the project.

4. In order to modify the boundaries of a project for which a permit has previously been obtained, a revised permit will be required, under conditions similar to those under which the original permit was issued, or as modified by the director.

5. In order to obtain a permit to conduct weather modification activities in Kansas, an applicant must: a. Submit to the director a completed form KWM No. 2 (copy attached).

b. Pay the \$100.00 permit fee, if applicable.

c. Present evidence that the applicant is, or has in its employ, a licensee.

d. Demonstrate proof of ability to meet the liability requirements of section 1411 (4) of the Kansas weather modification act. This proof may be provided in the form of an insurance policy written by a company authorized to do business in Kansas or by a statement of individual worth which is satisfactory to the director.

e. Submit a complete and satisfactory operational plan for the proposed weather modification

project which includes: (1) A map of the proposed operating area which specifies the primary target area and shows the area reasonably expected to be affected.

(2) The name and address of the licensee.

(3) The nature and object of the intended weather modification activities.

(4) The meteorological criteria to be used to initiate or suspend modification activities.

(5) The person or organization on whose behalf it is to be conducted.

(6) A statement showing any expected effect upon the environment.

(7) The methods that will be used in determining and evaluating the proposed weather modification project.

(8) Such other information as may be required by the director.

f. Publish a "notice of intent" to engage in weather modification activities in each county of which all or part may be within the primary target area or within the areas reasonably expected to be affected, at least seven (7) days prior to the required public hearing. The time and place of the public hearing must be approved by the director. The "notice of intent" shall include notice in a newspaper or newspapers of general circulation in the area. In addition, the use of radio and television spot announcements is encouraged. The notice shall: (1) Describe the primary target area.

(2) Describe the area which might reasonably be affected.

(3) Specify the period of operation including starting and ending dates, which operation need not be continuous.

(4) Describe the general method of operation.

(5) Describe the intended effect of the operation.

(6) State the time and place of a public hearing on the application; the hearing to be in or near the primary target area.

(7) State that complete details of the application for a permit will be available for examination in the office of the water resources board in Topeka and at a location within the project area as described in the public hearing notice.

g. Provide satisfactory evidence of publication of the "notice of intent" to the director prior to the public hearing.

6. At the discretion of the director, additional information may be required of the applicant. The additional information required may include a comprehensive environmental impact analysis

similar to the statements required for federal projects.

7. Any permit issued for a weather modification activity shall be subject to revision, suspension, or modification of its terms and conditions by the director, if necessary to protect the health, safety, or property of any person or to protect the environment. (Authorized by K.S.A. 1975 Supp. 82a-1403; effective, E-74-39, July 26, 1974; effective May 1, 1976.)

**98-4-5. Evaluation of permit application.** Permit applications will be evaluated based on the following considerations: 1. The project can reasonably be expected to benefit the residents of the primary target area or an important segment of the state's population.

2. The testimony and information presented at the public hearing is generally favorable to the proposed activity.

3. Economic, social, or research benefits are expected: a. If the application is for a commercial project, the project is scientifically and technically feasible.

b. If the application is for a scientific or research project, it offers promise of expanding the knowledge and technology of weather modification.

4. The applicant has provided adequate safeguards against potentially hazardous effects to health, property, or environmental and has outlined a program for the implementation of these safeguards.

5. The proposed project will not have any detrimental effect on previously authorized weather modification projects.

6. The project is to be under the personal direction, on a day-to-day basis, of an individual who holds a valid license, issued under the Kansas weather modification act. (Authorized by K.S.A. 1975 Supp. 82a-1403; effective, E-74-39, July 26, 1974; effective May 1, 1976.)

**98-4-6. Reports.** 1. The permit holder will maintain at his project office a current (within 24 hours) log of all operations. This log must be available for inspection by persons so authorized by the director. The log will include information at least equivalent to that on form KWM No. 3 (copy attached).

2. Reports of weather modification activities under the permit will be made monthly to the director for each calendar month for which the permit is valid. These should be submitted by the

15th day of the following month. Copies of all entries made on weather modification form KWM No. 3 shall be submitted when making these reports unless a more detailed form is agreed to at the time the permit is granted.

3. A preliminary report shall be made within thirty (30) days after the end of each calendar year or within thirty (30) days after the end of the project, whichever comes first, with a final report on the project submitted not later than ninety (90) days following the end of the project. These reports shall include: a. Monthly and project period totals for information required on form KWM No. 3.

b. The permit holder's interpretation of project effects as compared to those anticipated in the original application for the permit. (Authorized by K.S.A. 1975 Supp. 82a-1403; effective, E-74-39, July 26, 1974; effective May 1, 1976.)

**98-4-7. Procedure for granting emergency permits.** 1. A permit may be granted on an emergency basis through the waiving of regular rules of procedure when evidence is presented that clearly identifies the situation as an emergency as defined in 98-4-2(3).

2. Upon presentation of evidence satisfactory to the director that a condition exists or may reasonably be expected to exist in the very near future that may be alleviated or overcome by weather modification activities, the director shall issue a permit to an individual holding a license issued under this act. Coincident with the issuance of the permit, the director shall also release to the news media in the area intended to be affected, the information contained in the permit.

3. Within ten (10) days after the granting of an emergency permit, and if the permittee desires to continue his activities, the director shall set a date for a public hearing and the permittee will provide public notice of such hearing through the regular news media in the area. At the public meeting, the permittee shall describe: a. The objectives of the emergency action.

b. The success to date.

c. His future plans under the permit.

On the basis of the information presented at this public hearing and the response of the local people, the director will then decide whether to revoke the emergency permit, modify it, or permit its continued operation under conditions specified by the director. (Authorized by K.S.A. 1975 Supp. 82a-1403; effective May 1, 1976.)



**98-4-8. Procedure for suspension or revocation of permits.**

1. *Automatic suspension of permit.* Any weather modification permit issued under the terms of the Kansas weather modification act will be suspended automatically if the licensee's weather modification license expires or if the person designated as being in control of the project becomes incapacitated or leaves the employment of the permit holder and a replacement approved by the board is not on the job site. A permit which is suspended for these reasons may be reinstated by the board following renewal of the expired license or submission of an amended personnel statement nominating a person whose qualifications for a license are acceptable to the board.

2. *Emergency suspension of a permit.* When an emergency exists or appears imminent, or the director has been notified of a probable impending emergency, he may order the immediate suspension of all weather modification operations within the area affected by such condition. This notification shall be given in the most expeditious manner. If the telephone is used to give this notice, it is to be followed promptly by a letter of particulars addressed to the permit holder and stating the time and place for holding a hearing on the question of taking permanent action on the permit if the director determines such a hearing is necessary or desirable. Whether or not the permit is reinstated by the director, and when such reinstatement may take place, will depend upon the conditions that develop within the permit area or when the requirements of the director are met. Failure of the licensee to notify the director of an existing or impending emergency which should have reasonably been foreseen may be grounds for revocation of the permit and the operator's license. (Authorized by K.S.A. 1975 Supp. 82a-1403; effective May 1, 1976.)

**98-4-9. Procedure for suspension or revocation of licenses.** 1. The board may suspend or revoke any existing license for the following reasons: a. The licensee is found not to possess the qualifications necessary to meet the requirements of the law.

b. The licensee has violated one or more of the provisions of his license, the Kansas weather modification act, or these rules.

c. It has reason to believe that the weather

modification efforts of the licensee may produce undesirable effects.

2. When the director has reason to believe that a condition exists which would be a basis for the suspension or revocation of a license, he shall so inform the board with a recommendation for suspension or revocation. If the board determines that the situation requires a hearing, the director shall, at least thirty (30) days prior to the meeting of the board at which the matter will be considered, notify the licensee and any other interested party of the pending board action. The hearing shall be conducted as provided for in the Kansas weather modification act.

The notice to the licensee shall include: a. The director's recommendation to the board; b. the reasons for the director's recommendation; and c. the time and place of the board meeting at which the matter will be heard. The licensee or any other interested party may attend the board meeting at which the board will make its determination and may present relevant evidence to the board concerning the revocation or suspension. (Authorized by K.S.A. 1975 Supp. 82a-1403; effective May 1, 1976.)

**98-4-10. Field operations.** 1. As provided under section 98-4-5, paragraph 6, there shall be the license holder or a substitute approved by the director on duty at the project site at all times while weather modification activities are being carried out.

2. In order to supply local guidance to each weather modification project, the permit holder may seek the advice and assistance of concerned citizens within the area affected by weather modification activity. This group, which may be selected at the time of the public hearing, must be approved by the director. This local advisory group may: a. Assist in developing the operational plan; b. assist in financial arrangements; and c. assist the director in the evaluation of the project.

3. The permit holder shall not conduct activities outside the limits stated in the operational plan (98-4-4 (5e)). Activities planned for periods of severe weather shall be stated in the permit application and identified at the public hearing on the application for a permit. (Authorized by K.S.A. 1975 Supp. 82a-1403; effective May 1, 1976.)

Kansas Water Resources Board  
Room 407 — Mills Building  
109 W. 9th Street  
Topeka, Kansas 66612

For KWRB Use Only

Year Valid \_\_\_\_\_

New \_\_\_\_\_

Renewal \_\_\_\_\_

License No. \_\_\_\_\_

**APPLICATION FOR LICENSE  
TO ENGAGE IN WEATHER MODIFICATION ACTIVITY  
WITHIN THE STATE OF KANSAS**

1. Name of applicant \_\_\_\_\_

2. Business address \_\_\_\_\_

3. Applicant intends to do business on an \_\_\_\_\_

(individual, partnership, consultant, employee, corporation, other)

4. Print below the *full* name and address of all personnel to be engaged in weather modification activities who may be in control and in charge of activities for applicant.

Full Name (Do not use initials)	Residence or Business Address

5. Has any person listed under "Personnel" been denied a license to conduct or participate in weather modification activities in Kansas or elsewhere, or had a license suspended or revoked? \_\_\_\_\_ If so, attach a detailed statement.

6. Give the name, education, experience, and qualifications of the person or persons who may be in control and in charge of weather modification activities. (If more than one, attach additional sheets).

NAME: \_\_\_\_\_

	Course of Study (Major)	Years or Semester Hrs.	Graduated (Yes or No) & Year of Graduation
Jr. College		1   2	
College or University		1   2   3   4	(Degree)
University Graduate Study			(Degree)
Certificates of Professional or Vocational Competence or License			
Membership Status in Professional or Technical Associations			

**EXPERIENCE IN WEATHER MODIFICATION OPERATIONS, EXPERIMENTS, OR PLANNING**  
(Begin with most recent experience).

From Mo. Yr.	To Mo. Yr.	Occupations and Description of Duties (List each position separately)	Employers (Name, Address, & Type of business)

7. Special education and experience qualifications (publications, reports, awards).

8. Specific type(s) of weather modification activity(ies) which applicant wishes to be licensed to perform (fog dispersal, hail suppression, rain augmentation, etc.)

I certify that the information contained in this application is correct to the best of my knowledge.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Subscribed and sworn to or affirmed before me

This \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

Title \_\_\_\_\_

Notary Public in and for the County of \_\_\_\_\_, State of \_\_\_\_\_

FORM KWM No. 2

Kansas Water Resources Board  
Room 407 — Mills Building  
109 W. 9th Street  
Topeka, Kansas 66612

For KWRB Use Only

Year \_\_\_\_\_

Permit Valid

\_\_\_\_\_ to \_\_\_\_\_

Permit No. \_\_\_\_\_

Fee (Yes or No) \_\_\_\_\_

**APPLICATION FOR A PERMIT  
TO ENGAGE IN A WEATHER MODIFICATION ACTIVITY  
WITHIN THE STATE OF KANSAS**

1. Name of applicant \_\_\_\_\_

2. Business address \_\_\_\_\_

3. Person(s) who will be in control and in charge of activity

4. Kansas Weather Modification License Number(s) \_\_\_\_\_

5. Does applicant wish to be considered exempt from fee requirements of the Kansas Weather Modification Act? (K.S.A. 82a-1406 (b)). If so, give justification.

6. Primary purpose(s) of the weather modification activity to be conducted under the permit:

7. Person(s) or organization on whose behalf the proposed weather modification activity is to be conducted:

8. In accordance with the requirements of K.S.A. 82a-1411 (a) and the rules and regulations applicable thereto, the following attachments are submitted with this application:

(a) Permit fee in the form of \_\_\_\_\_

(b) Proof of financial responsibility in the form of \_\_\_\_\_

(c) Proposed operational plan

(d) Proposed Notice of Intent to engage in weather modification activities

(e) Contracts or agreements applicable to the conduct and execution of the proposed weather modification activity

I hereby make application for a permit under the Kansas Weather Modification Act. K.S.A. 82a-1401-1424.

Date \_\_\_\_\_

Signature

Kansas Water Resources Board,

Room 407 — Mills Building, 109 W. 9th Street, Topeka, Kansas

KWM No. 3, Page \_\_\_\_ of \_\_\_\_

Daily Log of Weather Modification Activities								Month	Year	Permit No.	
(Read Instructions on Reverse Side Before Entering Data)								Aircraft or Apparatus Identification:			
								Licensee:	No.		
Position or Location of					Type of Phenomena Modified						
Seeding					Clouds						
Local Time					Stratiform Cumuliform Other						
Date	Event	Start	Stop	Total	Type	Rate	Amount	Isolated	Organized	(fog, hail, rain)	
1	2	3	4	5	6	7	8	9	10	11	

### INSTRUCTIONS FOR COMPLETING DAILY LOG FORM KWM No. 3

This form is suitable for recording the operation of individual items of airborne or ground-based equipment. For clarity, a separate log should be kept for each such piece of equipment. (Each aircraft, ground generator, etc.) In order to avoid duplication of effort, daily log forms required by federal regulations may be used in lieu of this form if the following instructions are carried out in completing the federal forms.

- A. A separate seeding event, requiring entries in all appropriate columns, shall be logged whenever:
- (a) The cloud or cloud system being modified can reasonably be considered unaffected by previous release of seeding agents (Col. 2).
  - (b) The time since the last release of seeding agent exceeds one hour (Col. 3 and 4).
  - (c) The type of seeding agent used, or its rate of application, is changed (Col. 6 and 7).
  - (d) The cloud form being seeded changes (Col. 9-12).
- B. Explanation of column entries.
- Col. (1) Give date by calendar month and day.
  - Col. (2) Give aircraft position or location of ground-based equipment. Aircraft position may use VOR-DME or be given in miles (10 statute miles or less) from nearby towns or landmarks. (e.g. 7 miles SSE of Tribune).
  - Col. (3 & 4) State local time when modification activity began and ended. Use 24-hour clock time (e.g., 0100 signifies 1:00 A.M. and 2300 signifies 11:00 P.M.). For intermittent operations, the start and end of the total sequence are acceptable.



- Col. (5) Give duration of operation of each unit of weather modification apparatus, in hours and minutes.  
(Col. 5 = Col. 4 – Col. 3)
- Col. (6) Describe seeding agent used, such as silver iodide pyrotechnic flares, silver iodide in acetone solution, sodium chloride, liquid urea, dry ice, etc.
- Col. (7) Give rate of dispersal of seeding agent in gm./min., lbs./ min., or other appropriate units.
- Col. (8) Give total amount of seeding agent used.
- Col. (9-12) Identify the predominant cloud or precipitation type being modified, such as snow or rain from stratiform clouds, rain or hail from cumuliform clouds, etc.
- C. On the daily log sheet for the last day of each month, give monthly totals for Columns (2, 5, 8, and 9-12).

### Article 5.—STATE WATER PLAN STORAGE

#### 98-5-1. Definitions. (a) “Assignment” means:

(1) the transfer of any right under a water purchase contract to a third person; or

(2) the transfer to a third person of any of the duties and obligations owed by the water contract holder to the state.

(b) “Chairperson” means the chairperson of the Kansas water authority.

(c) “Conservation storage water supply capacity” means the space in a reservoir which has been:

(1) Purchased, contracted for purchase, or otherwise acquired by the state; and

(2) designated for the storage of water for any beneficial purpose or for sediment accumulation purposes in proportion to the amount of storage purchased, contracted for purchase, or otherwise acquired by the state.

(d) “Days” means calendar days except when the time period ends on a legal holiday or week-end. In such a case, the next business day shall be the last day counted for the time period.

(e) “Designated representative” means any person designated by the director to perform duties and functions on the director’s behalf.

(f) “Drought having a two percent chance of occurrence in any one year” means a drought having a statistical chance of occurring once every 50 years, on the average. The drought which has a two percent chance of occurrence in any one year is assumed to lie within the continuous drought of record during the years 1952 through 1957.

(g) “Industrial use” means any use of water primarily for the production of goods, food, or fiber, or for providing utility services, and includes any incidental uses.

(h) “Municipal use” means the various uses of water which is:

(1) Obtained from a common water supply

source by a municipality, rural water district, other water supply district, or group of householders;

(2) delivered through a common distribution system; and

(3) used for domestic, commercial, trade, industrial, and any other related incidental uses for any beneficial purposes.

(i) “Natural flow” means that portion of the flow in a natural stream that consists of precipitation on the stream and reservoir water surface, direct runoff from precipitation on the land surface, groundwater infiltration to the stream, and return flows to the natural stream from municipal, agricultural, or other uses.

(j) “Reservoir” means a lake or other impoundment in which water is stored.

(k) “Reservoir yield” means the quantity of water which can be withdrawn from the conservation storage water supply capacity of a reservoir with a two percent chance of shortage, as determined through the procedure described in K.A.R. 98-5-8.

(l) “Water reservation right” means the state’s right to divert and store waters of all streams flowing into the conservation storage water supply capacity of a reservoir. The right shall be sufficient to ensure the yield of water throughout a drought having a two percent chance of occurrence in any one year.

(m) “Year” means the 12 month period beginning with a specified month and day of year and continuing through the day preceding the same month and day of the next succeeding calendar year. (Authorized by K.S.A. 82a-1319; implementing K.S.A. 82a-1305; effective May 1, 1979; amended May 1, 1980; amended May 1, 1984; amended Nov. 22, 1996.)

**98-5-2. Applications.** (a) Each application to enter into a water purchase contract shall be made in writing on forms prescribed by the director and shall be signed by the person making the application or the person’s chief officer or des-

ignated representative. The application shall be filed with the director.

(b) Each application shall include the following:

(1) The name and address of the applicant;

(2) the reservoir from which the applicant proposes to withdraw water;

(3) the peak daily rate at which the applicant proposes to withdraw water and the total annual quantity to be withdrawn;

(4) the uses proposed to be made of waters withdrawn; and

(5) the estimated date of first withdrawal of water.

(c) With each application or at any time before negotiations for a water purchase contract, the applicant shall file the following items with the director unless the requirement is waived by the director:

(1) The location and legal description of all works, ditches, conduits, and watercourses proposed to be constructed or used for the transportation of waters to and including the point of diversion;

(2) the engineering report or other evidence to support the need for the annual quantity of water requested throughout the term of the contract;

(3) any other information which the director may specify;

(4) any special requirement applicable to the applicant;

(5) a list of alternative sources of water available to the applicant; and

(6) whether the applicant has adopted and implemented a water conservation plan.

(d) In each application or at a time before use of the water as specified by the director, the applicant shall file the following items with the director unless the requirement is waived by the director:

(1) An engineering report and specifications for metering water;

(2) proof of any easement that is granted by the federal government for rights-of-way across, in, and upon federal government land which is required for intake, transmission of water, and necessary appurtenances;

(3) engineering plans and specifications for any pump, siphon, conduit, canal, or any other device planned to be used to withdraw water from the reservoir; and

(4) engineering plans and specifications for any pump, siphon, conduit, canal, or other device

planned to be used to divert water released from the reservoir to a watercourse.

(e) Upon receipt of an application in the office of the director, a stamp showing the date and time of receipt shall be placed on the application form.

(f) The director or a designated representative shall review the application for compliance with statutory and regulatory requirements and for completeness.

(g) An application that is complete and that complies with statutory and regulatory requirements shall be assigned an application number. Application numbers shall be assigned in chronological order according to the date and time of receipt of the application.

(h) An application that is not complete or that does not comply with statutory or regulatory requirements shall have the stamp showing the date and time of receipt cancelled by drawing an X or other suitable mark across the stamp.

(i) Within 30 days after receipt of the application, the director or a designated representative shall notify the applicant that:

(1) The application is accepted and assigned an application number;

(2) the application is incomplete and additional information or evidence is required before a number will be assigned; or

(3) the application does not comply with statutory or regulatory requirements and the reason why the application does not comply.

(j) When an application to enter into a water purchase contract or a written request to negotiate a water assurance contract is accepted in writing by the director, notice of the acceptance shall be provided to other applicants for withdrawal of water from the same reservoir and each water assurance district with a water assurance contract relating to the same reservoir at each applicant's or assurance district's last known address. The notice shall specify the name of the applicant whose application, or name of the assurance district whose request to negotiate, has just been accepted and the annual quantity of water included in the request.

(k) If a water purchase contract has not been executed by the 10th anniversary of the acceptance of an application, and if the applicant has not requested an extension of time for the application, the application shall be subject to cancellation by the director.

(l) Before cancellation of an application, the director shall notify the applicant in writing at the

applicant's last known address that the application shall be cancelled 30 days after date of the notice unless the applicant submits a written request for an extension of time for the application. The notice shall be sent by restricted mail. The application shall be cancelled by the director if a written request to extend the application is not received within 30 days from date of the notice.

(m) On or before the 10th anniversary of the application, the applicant may request, in writing, that the application be extended for a period of up to three years. The extension shall be granted unless the application is found to be incomplete or not in compliance with statutory or regulatory requirements.

(n) Any part of the application, except the reservoir from which the applicant proposes to withdraw water, may be amended at any time. The applicant shall file a new application to change the reservoir from which the applicant proposes to withdraw water. The new application shall be assigned a date and application number as provided in subsection (g) of this regulation. (Authorized by K.S.A. 82a-1319; implementing K.S.A. 82a-1310a, K.S.A. 82a-1311a; effective May 1, 1979; amended May 1, 1980; amended May 1, 1981; amended May 1, 1984; amended May 1, 1987; amended April 26, 1993.)

**98-5-3. Contract negotiation procedures.** (a) Any person with an application on file with the director may request to negotiate a water purchase by filing a written request with the director or a designated representative.

(b) The director shall review the request and shall notify the applicant in writing within 30 days as to whether the information on file is sufficient to request the authority to authorize negotiations for a water purchase contract.

(c) The director may require any applicant to provide information in addition to that included in the application required in K.A.R. 98-5-2(b) and (c). Such information shall be for the purpose of determining:

- (1) The actual annual quantity of water needed;
- (2) whether the proposed sale of water supply is in the public interest; and
- (3) whether the benefits to the state from approval of the contract are greater than the benefits to the state from rejection of the contract.

(d) When sufficient information is available to determine whether the proposed sale is in the interest of the people of the state of Kansas and will

advance the purposes set forth in K.S.A. 82a-901 *et seq.*, and amendments thereto, the director shall notify the authority that a request to enter into negotiations for a written contract has been received.

(e) The director shall provide the authority with the information collected or developed to show that the proposed sale is in the interest of the people of the state of Kansas and that it will advance the purposes set forth in K.S.A. 82a-901 *et seq.*, and amendments thereto.

(f) The authority shall consider the request to begin negotiations for a written contract and make a finding that:

(1) The proposed sale is in the public interest and it will advance the purposes set forth in K.S.A. 82a-901 *et seq.*; or

(2) the proposed sale is not in the public interest and it will not advance the purposes set forth in K.S.A. 82a-901 *et seq.*

(g) If the authority finds that the proposed sale is not in the public interest or that it will not advance the purposes set forth in K.S.A. 82a-901 *et seq.*, the authority shall do one of the following:

(1) Reject the request to begin negotiations and advise the applicant of the reasons; or

(2) request the applicant or the director to provide additional information which would permit the authority to find that the proposed sale is in the public interest and that it will advance the purposes set forth in K.S.A. 82a-901 *et seq.*

(h) When the authority finds that the proposed sale is in the public interest and that it will advance the purposes set forth in K.S.A. 82a-901 *et seq.*, the authority shall authorize the director to negotiate with the applicant for the purposes of entering into a written contract for sale of water supply.

(i) After negotiations for a water purchase contract have been authorized by the authority and when the proposed sale is not for surplus waters, the director or a designated representative shall notify all other persons with a pending application, a water assurance contract, or a request to negotiate a water assurance contract relating to the same reservoir that negotiations for a water purchase contract have been authorized by the authority. The notice shall include the name of the applicant with whom negotiations are underway, the person's application date and number, and annual quantity requested.

(j) Each person who has an application, a water assurance contract, or a request to negotiate a wa-

ter assurance contract on file with the director relating to the reservoir from which water is proposed to be sold shall choose:

(1) Not to request to negotiate for a written contract; or

(2) to file a written request with the director to enter into negotiations for a written contract as provided in subsection (a) within 20 days following notification by the director.

(k) Within 30 days after negotiations are authorized by the authority, a draft water purchase contract shall be sent by the director or a designated representative to the applicants with whom the negotiations are authorized.

(l) When contract details and explanations of contract requirements have been completed, the director shall send a proposed final contract to the applicant.

(m) After receipt of the proposed final contract, the applicant shall, within 10 days:

(1) Indicate acceptance of the contract by signing and returning it to the director or by other communication to the director;

(2) return the contract to the director with written comments;

(3) request a meeting with the director to discuss the contract; or

(4) request an extension of time for consideration of the contract.

(n) If the person and the director cannot agree on terms or language in the contract, the negotiations may be terminated by the director.

(o) Within 10 days after the applicant and the director both agree to a contract, the contract shall be submitted to the authority for consideration at a regular meeting of the authority or at a special meeting, if deemed necessary by the chairperson and director.

(p) Before approving any contract, the authority shall find that:

(1) The sale of water by written contract is in the interest of the people of the state of Kansas;

(2) the state has filed or will file, prior to initiation of water use under the contract, a water reservation right for storage of water in the reservoir designated in the contract;

(3) the state, if necessary, has signed an agreement with an agency or department of the United States of America for water supply storage in the named reservoir;

(4) the person has filed an application to negotiate the purchase of water from the named res-

ervoir at an average daily rate equal to or greater than specified in the contract;

(5) the reservoir yield being negotiated does not exceed the yield capability from the conservation storage water supply capacity available to the state for use under the water marketing program through a drought having a two percent chance of occurrence in any one year; and

(6) the annual withdrawal and use of the quantity of water contracted by the applicant will advance the purposes set forth in K.S.A. 82a-901 *et seq.*

(q) If the authority finds that the proposed sale of water is not in the interest of the people of the state of Kansas or that the proposed sale will not advance the purposes set forth in K.S.A. 82a-901 *et seq.*, the authority shall reject the contract and either:

(1) Terminate the contract negotiations; or

(2) return the contract to the applicant and director with recommendations for contract changes.

(r) When the authority approves the contract, the director shall transmit copies to the house of representatives and the senate and to the secretary of state, as provided by statute in K.S.A. 82a-1307, and amendments thereto.

(s) The application shall be terminated when a regular contract is signed by the applicant, the director, and the chairperson, or their designated representatives, and if the contract is not disapproved by the legislature. If the contracted quantity of water is less than the quantity stated in the application, the applicant shall not retain the application number for the remaining quantity. A new application shall be filed for additional water.

(t) Upon expiration of the period for legislative review and if the legislature has not disapproved the contract, the person shall file a copy of the water purchase contract with the chief engineer.

(u) The director may waive any regulatory requirements in order to sell surplus waters. (Authorized by K.S.A. 82a-1319; implementing K.S.A. 82a-1305, 82a-1306, 82a-1307, 82a-1308a, 82a-1311a, K.S.A. 82a-1312; effective May 1, 1979; amended May 1, 1980; amended, E-82-7, April 10, 1981; amended May 1, 1981; amended May 1, 1984; amended May 1, 1987; amended April 26, 1993.)

**98-5-4. Assignment.** (a) The purchaser shall not assign, sell, convey, or transfer all or any part of the water purchase contract or interest in



it, unless and until the assignment, sale, conveyance, or transfer is approved by the authority.

(b) The purchaser shall:

(1) Inform the director, in writing and in advance, of any proposed assignment, sale, conveyance, or transfer of all or any part of the water purchase contract;

(2) cite the reasons why the proposed assignment, sale, conveyance, or transfer of all or any part of the water purchase contract is in the public interest;

(3) set forth whether the assignment, sale, conveyance, or transfer will require a change in either place or purpose of use;

(4) set forth what quantity of water is to be subject to the assignment, sale, conveyance, or transfer; and

(5) provide copies of all documents which are pertinent to the assignment, sale, conveyance, or transfer of all or any part of the water purchase contract and any other information that the director or the authority may request.

(c) Before approving any assignment, sale, conveyance, or transfer of all or any part of the water purchase contract, the authority shall determine that:

(1) The contract was negotiated and signed by the parties to the contract in accordance with articles 9 and 13 of chapter 82a of Kansas Statutes Annotated; and

(2) the assignment is consistent with, and will advance, the purposes set forth in article 9 of chapter 82a of Kansas Statutes Annotated. (Authorized by K.S.A. 82a-1319; implementing K.S.A. 82a-1316; effective May 1, 1979; amended May 1, 1980; amended May 1, 1981; amended May 1, 1984.)

**98-5-5. Rate charged for water.** (a) The director shall fix the rate to be charged for water as provided in K.S.A. 82a-1308a, as amended. The rate shall be fixed on or before July 15 of each calendar year and shall take effect on January 1 of the following year.

(b) The rate fixed shall include amounts to cover the components required in K.S.A. 82a-1308a, as amended.

(c) The amount necessary, pursuant to K.S.A. 82a-1308a, subsection (a)(1), as amended, to repay the amortized capital costs, shall be determined by using the formula

$$A = \frac{P1 - R}{T1}$$

where:

(1) "A" equals the amount necessary to repay the amortized capital costs;

(2) "P1" equals the cumulative actual and projected amount of monies to be paid by the state for principal and interest on those reservoirs which contain conservation water supply capacity during the period from calendar year 1974 through the calendar year when the last payment for principal and interest is scheduled to be made;

(3) "R" equals the cumulative amount of revenues designated for deposit, in the state general fund from calendar year 1974 through the preceding calendar year for repayment of amortized capital costs, including revenues from water assurance district's to repay the state for its equity investment in reservoir. Storage space transferred to the assurance program and revenues deposited in the state conservation storage water supply fund which have been used to pay capital costs; and

(4) "T1" equals the total projected minimum annual quantity of water obligated or anticipated water use under contract, which ever is larger, expressed in 1,000 gallon units, during the period from the current calendar year through the calendar year when the last payment for principal and interest is scheduled to be made.

(d) The amount, pursuant to K.S.A. 82a-1308a, subsection (a)(2), as amended, as interest on the net amount of monies advanced from the state general fund for payment of amortized capital costs shall be determined by using the formula

$$B = \frac{(P2 - R) I}{T2}$$

where:

(1) "B" equals the amount as interest on the net amount of monies advanced from the state general fund for payment of the amortized capital costs;

(2) "P2" equals the cumulative actual payments for principal and interest during the period beginning with calendar year 1974 and ending with the year preceding the current calendar year;

(3) "R" equals the cumulative amount of revenues designated for deposit in the state general fund during the same period for repayment of amortized capital costs, including revenues from water assurance district's to repay the state for its

equity investment in reservoir. Storage space transferred to the assurance program and revenues deposited in the state conservation storage water supply fund which have been used to pay capital costs;

(4) "T2" equals the sum, expressed in 1,000 gallon units, of the totals from each individual contract in effect during the preceding calendar year of either the minimum annual quantity of water obligated or the actual quantity of water used during the preceding calendar year, whichever quantity is greater; and

(5) "I" equals the average interest rate calculated for earnings during the preceding calendar year on investments of state funds by the pooled money investment board.

(e) The amount necessary, pursuant to K.S.A. 82a-1308a, subsection (a)(3), as amended, to reimburse the state for the cost of administration and enforcement of the act shall be determined by using the formula

$$C = \frac{E}{T2}$$

where:

(1) "C" equals the amount necessary to reimburse the state for the actual costs of administration and enforcement of the act;

(2) "E" equals the total actual costs of Kansas water office and division of water resources of the state board of agriculture for administration and enforcement during the preceding calendar year; and

(3) "T2" equals the sum, expressed in 1,000 gallon units, of the totals from each individual contract in effect during the preceding calendar year of either the minimum annual quantity of water obligated or the actual quantity of water used during the preceding calendar year, whichever quantity is greater.

(f) The amount necessary, pursuant to K.S.A. 82a-1308a, subsection (a)(4), as amended, to repay the operation, maintenance and repair costs associated with the state's conservation water supply capacity shall be determined by using the formula

$$D = \frac{O}{T2}$$

where:

(1) "D" equals the amount necessary to repay the operation, maintenance and repair costs as-

sociated with the state's conservation water supply capacity;

(2) "O" equals the actual amount paid for operation, maintenance and repair costs during the preceding calendar year; and

(3) "T2" equals, the sum, expressed in 1,000 gallon units, of the total from each individual contract in effect during the preceding calendar year of either the minimum annual quantity of water obligated or the actual quantity of water used during the preceding calendar year, whichever quantity is greater.

(g) The amount for depreciation reserve shall be the amount specified in K.S.A. 82a-1308a, subsection (a)(5), as amended.

(h) The rate fixed by the director shall be approved by the Kansas water authority on or before July 15 of each calendar year. Approval shall be obtained either at a regular or special meeting of the authority. The meeting may be conducted in person, by conference call, by telephone poll of the voting members of the authority, or by mail ballot of the voting members of the authority.

(i) Affirmative votes by a simple majority of the voting members shall be sufficient to approve the rate fixed by the director.

(j) The rate fixed for each calendar year shall apply to all water use under contracts negotiated after March 17, 1983.

(k) For any contract negotiated before March 17, 1983, the rate in effect on the date established by the contract for review and adjustment of the rate charged for water shall become the new rate to be charged for all water which must be paid for under terms of the contract up to a maximum rate not to exceed 10 cents per 1,000 gallons. The new rate shall remain in effect until the next succeeding date established by the contract for review of the rate charged for water. (Authorized by K.S.A. 82a-1319; implementing K.S.A. 82a-1306, K.S.A. 82a-1308a; effective May 1, 1984; amended May 1, 1987; amended April 26, 1993.)

#### **98-5-6. Rate charged for surplus water.**

(a) No charges shall be made for surplus water when such water is for streamflow maintenance or reservoir pool management. The rate to be charged for surplus waters used for maintenance of the public health shall be at the rate set under K.S.A. 82a-1308a. The rate to be charged in all other contracts for the sale of waters which are found by the authority, pursuant to K.S.A. 82a-1305, as amended, to be surplus waters shall be

double the rate set for water in accordance with K.S.A. 82a-1308a, as amended. The purchaser shall be obligated to pay for a minimum of 80 percent of the quantity in the contract.

(b) The rate charged for surplus waters under this section shall change on January 1 of each calendar year as the rate set in accordance with K.S.A. 82a-1308a, as amended, becomes effective. (Authorized by K.S.A. 82a-1319; implementing K.S.A. 82a-1305; effective, T-84-29, Oct. 19, 1983; effective May 1, 1984; amended May 1, 1987.)

**98-5-7. Contract provisions.** (a) Each contract for sale of water supply shall conform to the standard formats adopted by the director and approved by the authority. Whenever the director determines, during the contract negotiation process, that any article or portion of any article in the standard contract format is not needed or is not applicable, the director may delete the article or portion thereof from the standard contract.

(b) Any special requirement not covered in the standard contract format may be added as an additional article in the contract.

(c) The minimum annual charge for water required in each contract shall be the sum of the following two components:

(1) Fifty percent of the total annual amount of water contracted for that year multiplied by the rate established in accordance with K.A.R. 98-5-5; and

(2) fifty percent of the total annual amount of water contracted for that year, multiplied by the rate per annum as interest equal to the average rate of interest earned during the preceding calendar year on the investment of state monies by the pooled money investment board, multiplied by the net amount of monies advanced from state funds for the costs incurred and associated with providing that 50 percent of the total annual amount of water contracted for purchase.

(d) The director shall determine the net amount of monies advanced from state funds for the costs incurred and associated with providing water for purchase. The net amount of monies advanced shall be determined by:

(1) Adding the following components:

(A) The cumulative amount of monies paid to the federal government for repayment of capital costs during the period beginning with calendar year 1974 and ending with the year preceding the current calendar year; and

(B) the cumulative amount of monies paid to the federal government for repayment of operation, maintenance and replacement costs during the period beginning with calendar year 1974 and ending with the year preceding the current calendar year; and

(C) the cumulative estimated and actual costs associated with administration and enforcement; and

(2) subtracting the cumulative amount of revenues deposited in the state general fund for repayment of capital costs or for unspecified purposes from the sum calculated under paragraph (d)(1); and

(3) Dividing the resultant amount calculated in (1) and (2) by the total annual yield, expressed in thousands of gallons per year, from the state's conservation storage water supply capacity. (Authorized by K.S.A. 82a-1319; implementing K.S.A. 82a-1305, K.S.A. 82a-1306; effective May 1, 1984; amended May 1, 1987.)

**98-5-8. Determination of reservoir yields through droughts with a two percent chance of occurrence in any one year.** (a) In

determining the yield of a reservoir through a drought with a two percent chance of occurrence in any one year, the following shall be used by the director:

(1) The drought which has a two percent chance of occurrence in any one year lies within the continuous drought of record during the years 1952 through 1957;

(2) The reservoir yield which can be reasonably expected to be maintained during a drought with a two percent chance of occurrence in any one year is the water which would be available from the conservation storage water supply capacity with no shortage through a period equivalent to the hydrologic and climatic record during the years of 1952 and 1957;

(3) The historic monthly inflows during the years of 1952 through 1957, as adjusted for depletions after 1957, will be routed through the reservoir;

(4) The conservation storage water supply capacity providing the reservoir yield will be that capacity which is anticipated to be available after 40 years of sedimentation from the time of determining the reservoir yield;

(5) All conservation storage water supply capacity in a reservoir will be assumed to be fully utilized during the time period of 1952 through

1957, accounting for evaporation from the surface area of the reservoir; and

(6) Reservoir yields of 99.9 million gallons per day or less (99.9 MGD) will be computed to a precision of 100,000 gallons per day (0.1 MGD). Reservoir yields greater than 100 million gallons per day (100 MGD) will be computed to a precision of one million gallons per day (1 MGD).

(b) The reservoir yield may be recalculated after receipt of updated information regarding inflow depletions, reservoir sedimentation, or revisions to reservoir operating criteria. (Authorized by and implementing K.S.A. 82a-1309; effective Nov. 22, 1996.)

#### **Article 6.—WATER ASSURANCE PROGRAM**

**98-6-1. Definitions.** (a) “Act” means the water assurance program act K.S.A. 82a-1330 *et seq.*, as amended.

(b) “Assurance reservoir” means any reservoir containing assurance storage.

(c) “Assurance storage” means that part of the conservation storage water supply capacity of any reservoir devoted to the storage water for the water assurance program.

(d) “Assurance water” means water stored in assurance storage of a reservoir under a water reservation right and provided as supplemental water to eligible water right holders.

(e) “Conservation storage water supply capacity” means the space in the reservoir which has been:

(1) purchased, contracted for purchase or otherwise acquired by the state; and

(2) designated for the storage of water for any beneficial purposes, other than flood control, and for sediment accumulation purposes.

(f) “Designated representative” means any person designated by the director to perform duties and functions on the director’s behalf.

(g) “Director” means the director of the Kansas water office.

(h) “Discharge” means the volume of water per unit of time passing a cross-section of a river.

(i) “Eligible water right holder” means any entity holding a water right or permit, pursuant to K.S.A. 82a-701 *et seq.* and amendments thereto, to appropriate water from a stream or water from the alluvium of the stream, downstream from an assurance reservoir, for municipal or industrial

purposes, as determined by the chief engineer pursuant to K.S.A. 1988 Supp. 82a-1333.

(j) “Member” means an eligible water right holder who, because of a determination of benefit by the chief engineer of the division of water resources, is required to participate in and is subject to the rules of a water assurance district. An eligible water right holder who withdraws water from the alluvium of a stream supplemented by an assurance reservoir shall be a member if the chief engineer determines there is significant benefit to the holder from supplementing the stream by assurance reservoir releases.

(k) “Operations agreement” means that document which has been agreed to by the Kansas water office and the water assurance district describing the terms by which the coordinated system of reservoir operations is to be managed.

(l) “Person” means any individual, corporation, partnership, joint venture, business trust or other business enterprise, or other legal entity, either public or private.

(m) “Target flow” means the discharge at specific points along a river designated within the operations agreement.

(n) “Water assurance contract” means a contract to provide for the development of a coordinated system of reservoir operations designed to supplement natural flows, in order to meet demands of eligible water right holders during low flow periods, by release of water supply from state-owned or controlled conservation storage water supply capacity of the major reservoirs in the designated basin.

(o) “Water assurance district” means an organization of eligible water right holders established under K.S.A. 82a-1330 *et seq.*

(p) “Water purchase contract” means a contract for the sale of water from the conservation storage water supply capacity of a reservoir made pursuant to the state water plan storage act, K.S.A. 82a-1301 *et seq.*, as amended.

(q) “Yield” means the quantity of water which can be withdrawn from storage in a reservoir for a given period of time. (Authorized by K.S.A. 1988 Supp. 82a-1345(e); implementing K.S.A. 1988 Supp. 82a-1330 *et seq.*; effective Sept. 4, 1989.)

**98-6-2. Contract authority.** The director of the Kansas water office shall enter into water assurance contracts with water assurance districts. (Authorized by K.S.A. 1988 Supp. 82a-1345(e);



implementing K.S.A. 1988 Supp. 82a-1330 *et seq.*; effective Sept. 4, 1989.)

**98-6-3. Contract negotiation procedures.** (a) Any water assurance district may request, in writing, to negotiate with the director for a water assurance contract. Each request shall include a copy of the district's certificate of incorporation filed with the secretary of state.

(b) The request shall be reviewed by the director and the district shall be notified by the director that the information provided is sufficient to begin negotiations for a water assurance contract. The notice shall be in writing and shall be provided within 30 days of receipt of the request.

(c) If the director finds the information provided by the assurance district is sufficient, the negotiations shall commence.

(d) Each person who has a water purchase contract or an application for a water purchase contract on file with the director, or a water assurance contract pertaining to storage in reservoirs in the designated basin, shall be notified in writing that negotiations with an assurance district have begun. The notice shall be mailed to each person's last known address. Each person so notified shall, within 20 days following notification by the director, file in writing a request to begin negotiations for a written contract, or forfeit their right to participate in this round of negotiations for a written contract for water purchase or for a water assurance contract.

(e) Water assurance contract negotiations shall be conducted by the director and the board members of the assurance district or their designated representatives.

(f) If the district and the director cannot agree on terms or language in the contract, the negotiations may be terminated by either party.

(g) A water assurance contract shall be approved by the director if the director finds that:

(1) the approval of the water assurance contract is in the best interest of the people of the state of Kansas;

(2) the water assurance contract refers to and incorporates by reference an operations agreement which includes:

(A) the rules of operation for designated assurance reservoirs to provide assurance water;

(B) quantities of water supply in designated assurance reservoirs;

(C) the quantities of water supply use by eligible members of the water assurance district;

(D) target flows along designated rivers and quantities of storage needed to help maintain these flows; and

(E) a provision to release water from storage from one or more reservoirs in order to dilute water from any reservoir which has become contaminated;

(3) the state has filed or will file, if necessary, prior to initiation of the operations agreement, a water reservation right for storage of water in the reservoirs designated in the contract;

(4) the state has signed or will sign, if necessary, an agreement with an agency or department of the United States of America for water supply storage space in reservoirs named in the operations agreement;

(5) the water assurance contract includes a statement that the water assurance storage component of the major reservoirs in the designated basin are designated for the sole use and benefit of the water assurance district in accordance with the operations agreement;

(6) the storage capacity being negotiated has been deducted from the total reservoir conservation storage water supply capacity, less that storage capacity set aside for sediment accumulation purposes, and the reservoir yield has been recalculated to assure that the remaining capacity satisfies any present and future water purchase contract;

(7) before any member of the water assurance district receives benefits or water pursuant to a water assurance contract, that member has adopted a water conservation plan consistent with the guidelines for conservation plans and practices developed and maintained by the Kansas water office pursuant to K.S.A. 74-2608, as amended; and

(8) the water assurance contract contains a provision which establishes procedures for allocating inflows in any reservoir in which a water assurance district has purchased storage.

(h) Upon completion of negotiations, a proposed final water assurance contract shall be sent by the director to the water assurance district.

(i) After receipt of the proposed final water assurance contract, the water assurance district shall, within 45 days:

(1) indicate acceptance of the water assurance contract by signing and returning it to the director;

(2) return the unsigned water assurance contract to the director with written comments;

(3) request a meeting with the director to discuss the water assurance contract; or

(4) request an extension of time for consideration of the water assurance contract.

(j) Upon final agreement and signing of a water assurance contract by the president and chairperson of the district board of directors, an original of the water assurance contract shall be filed with the following persons:

(1) director, Kansas water office;

(2) president of the contracting water assurance district board of directors;

(3) chief engineer, division of water resources;

(4) Kansas secretary of state; and

(5) district engineer of the U.S. army corps of engineers. (Authorized by K.S.A. 1988 Supp. 82a-1345(e); implementing K.S.A. 1988 Supp. 82a-1330 *et seq.*; effective Sept. 4, 1989.)

**98-6-4. Calculation of charges.** The charges to be paid by the district shall be determined by the director as provided in K.S.A. 1988 Supp. 82a-1345, which shall include:

(a) the amount necessary to cover the amortized capital costs to the state for acquisitions of assurance storage capacity from the federal government necessary to meet the requirements of the operations agreement shall be determined on an individual reservoir basis for reservoirs in the designated basin as follows:

(1) for that portion of conservation storage water supply capacity reallocated by the corps of engineers in Tuttle Creek, Pomona, Melvern, John Redmond, Marion, Council Grove and Elk City reservoirs purchased by the state prior to July 1, 1996, the following payment options are available:

(A) 100% of the costs to the state to acquire the space in one lump sum payment prior to commencement of operations under the operations agreement; or

(B) annual principal and interest payments on revenue bonds issued by the state as provided in K.S.A. 82a-1360 *et seq.*; or

(C) annual principal and interest payments on

revenue bonds issued under the authority of the Kansas development finance authority.

(2) for that portion of conservation storage water supply capacity in Big Hill, Clinton, Council Grove, Elk City, Hillsdale, John Redmond, Marion, Milford and Perry reservoirs acquired by the state under contracts with the corps of engineers, the following payment options are available:

(A) one lump sum up-front payment for principal and interest paid, or due to be paid, including any interest which has accumulated through the date of commencement of operations of such storage space under the operations agreement; or

(B) annual principal and interest payments on revenue bonds issued by the state as provided in K.S.A. 82a-1360 *et seq.*; or

(C) annual principal and interest payments on revenue bonds issued under authority of the Kansas development finance authority; or

(D) equal annual installments for future use conservation water supply storage capacity called into service by the state under contracts with the corps of engineers, under the same cost repayment conditions available to the state under those contracts; and

(E) equal annual installments for a maximum of up to 10 years without additional interest for any equity the state may already have in such future use conservation water supply storage capacity;

(b) the amount necessary to cover 100% of the annual cost to the state for the actual operation, maintenance, major replacement and rehabilitation costs allocated to the assurance storage capacity necessary to meet the requirements of the operations agreement;

(c) the amount necessary to cover the annual costs to the state for administration and enforcement of laws and agreements associated with assuring the continuous operations of the water assurance district; and

(d) any additional charges agreed upon by both parties. (Authorized by K.S.A. 1988 Supp. 82a-1345(e); implementing K.S.A. 1988 Supp. 82a-1345(a); effective Sept. 4, 1989.)